

QUESTIONS and ANSWERS
Technical Briefing – Emergencies Act
February 15th 2021

Consultation Requirements

What is the federal government’s obligation to consult provinces and territories?

A: Under a public order emergency, the general rule is that the federal government must consult each province where the emergency is occurring. If the emergency is occurring in only one province or one territory, the lieutenant governor in council of that province or territory has to confirm that the emergency exceeds the capacity or authority of the province to deal with it. Finally, if the situation is too urgent to conduct adequate consultations before declaring the emergency, the federal government can declare the emergency and then has seven parliamentary sitting days to complete the consultations. e

Do all provinces and territories need to consent before an emergency declaration is made?

A: Not necessarily. If the emergency is only occurring in one province or territory, only that province or territory needs to be consulted. It should be noted that in that scenario, the lieutenant governor in council of that province or the Commissioner of the territory has to confirm that the emergency exceeds the capacity or authority of the province to deal with the emergency before the federal government can invoke the *Emergencies Act*.

In the case of an emergency that applies to more than one province, the federal government and some provincial governments may disagree on the need to declare a national emergency. However, when the effects of the emergency are national in scope, potentially affecting the economy as a whole or safety and security of Canadians in more than one province, the final say on whether to declare an emergency rests with the federal government.

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Did the federal government fulfill its obligation to consult?

A: Consultations with the provinces and territories took place before the Order was issued. We are, of course, continuing to discuss and consult with them as this situation evolves.

Are measures limited to those provinces or territories that agree with the declaration?

A: No, however we note that the measures enacted in orders or regulations under the *Emergencies Act* can be geographically targeted to critical infrastructure. Canada will work with the provinces to give effect to the measures, and I wish to reiterate that these measures are intended to complement efforts that provinces continue

Peaceful Protest

Do the emergency measures infringe the right to protest?

Freedom of expression and peaceful assembly are fundamental freedoms protected by the Charter of Rights and Freedoms. Nonetheless, the right to protest does not extend to assemblies that are no longer peaceful.

Political protests can be subject to reasonable restrictions to prevent them from causing serious harms to others. For example, the Emergency Measures Regulations prohibit participation in a public assembly that may reasonably be expected to lead to a breach of the peace by:

- the serious disruption of the movement of persons or goods or the serious interference with trade;
- the interference with the function of critical infrastructure; or
- the support of the treatment or use of acts of serious violence against persons or property.

All measures made under the *Emergencies Act* are subject to the *Charter* of rights and freedoms.

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CSIS Threat Definition

Doesn't the government need to have CSIS confirm the existence of a national security threat before declaring a public order national emergency under the EA?

Answer: No. The definition of a public order emergency under the EA (s.16) incorporates by reference the definition of threats to the security of Canada found in s.2 of the *CSIS Act* for the purpose of declaring a public order national emergency under s.17 of the EA. Several federal statutes incorporate by reference that definition from the *CSIS Act*, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and the *Security Offences Act*.

On what basis does the GiC determine that the ongoing protest situation reaches the level of threats to the security of Canada?

As defined in s. 16 of the *Emergencies Act*, given the meaning assigned in s. 2 of the *CSIS Act*, “threats to the security of Canada” includes:

- a) sabotage, or activities in support of sabotage,
- b) foreign influenced activities that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- c) the threat or use of acts of serious violence against persons or property for the purpose of achieving a political or ideological objective, and,
- d) activities directed toward undermining by covert unlawful acts, or intended ultimately to lead to the overthrow by violence of the constitutionally established system of government in Canada.

Lawful advocacy, protest and dissent on its own does not fall within the definition of national security threat unless carried out in conjunction with any of these activities outlined above.

These elements are critical:

- that there is a threat to the security of Canada;
- that is so serious as to constitute a national emergency;
- that cannot effectively be dealt with by any other law of Canada, whether provincial, federal or territorial;

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- that the health and safety of Canadians is seriously endangered or that seriously threatens the ability of the Government of Canada to preserve the sovereignty security and territorial integrity of Canada.

Can a threat to Canada's economy/economic stability or prosperity be considered to be a "threat to the security of Canada" under the meaning assigned to this phrase in s.2 of the CSIS Act?

Answer: I will first point out that the definition of national security threat in present circumstances is being assessed **for the purposes of the *Emergencies Act***. Based on information that has been provided and continues to be provided to the GiC, the GiC can form the reasonable belief that a public order emergency exists for the purpose of the *Emergencies Act*, meaning the situation on the ground satisfied the definition of threat to the security of Canada and met the other conditions required to invoke the *Emergencies Act*.

While economic considerations do not expressly appear in the text of s. 2 of the *CSIS Act*, neither does the word "terrorism". As a principle of statutory interpretation, there is scope for certain of the defined categories to capture threats to Canada's economy or economic stability and prosperity.

Orders Process

When do the orders take effect, are they in force currently?

The regulations take effect the moment they are registered which is the day they are made.

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BACKGROUND REFERENCE

Economic Measure

Q: What will the proposed Emergency Economic Measures Order require banks (and other financial services providers) to do?

A: Banks and other Financial services providers) will be required to continually monitor whether they are in possession or control of property (i.e. a bank account) that is owned by an individual or entity that is involved in the blockades. If the institution does have property, such as a bank account, that belongs to someone involved in the blockades, they will have to freeze the account (“cease dealing”) with the property.

Q: What institutions will be covered by this order other than banks?

A: In addition to banks, it will apply to other financial services providers: credit unions, caisses populaires, insurance companies, securities dealers.

Q: What property can be subject to the “freeze” in this order?

A: In addition to funds held in a bank account, the order would apply to other property , for example digital assets such crypto-currencies.

Q: Will a bank (or financial services provider) have to get a court order to freeze a bank account?

A: No, under the order a bank (or financial services provider) will be able to freeze or suspend an account without a court order. The order provides that they will be protected against civil liability for actions taken in good faith.

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Q: When will a bank account (or other financial asset) be “unfrozen” or released?

A: The order requires banks (and financial services providers) to continually monitor their business and determine whether they have accounts or assets of people or entities involved in the blockades. They will have to stop or unfreeze the account when the account holder stops participating in the blockades.

Q: What does the Order accomplish in respect of crowdfunding (and related payment service providers) associated with the blockades?

A: The Order extends anti-money laundering and anti-terrorist financing requirements to crowdfunding platforms and the payment service providers.

- Specifically, the Order will ensure that these entities:
 1. Register with FINTRAC;
 2. Report any suspicious transaction to FINTRAC.
- These new requirements will ensure that crowdfunding and associated entities are subject to FINTRAC’s disclosure requirement - including the report of all suspicious transactions as well as all transactions totaling \$10,000 or more.

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CBSA Enforcement (for info)

When can CBSA start denying entry?

The EA regs include a prohibition on Foreign Nationals entering with the intent to participate in or facilitate a prohibited assembly. Therefore, CBSA can deny entry as soon as the EA regs are registered. Note there are exceptions to this rule including: persons registered under the Indian Act, Convention Refugees, Protected Persons, and those for whom there is a National Interest to have them in Canada.

Q2: What are the main immigration powers under the EA regs?

The authority to deny entry to Foreign Nationals seeking to participate in or facilitate a prohibited public assembly. Also the power to remove Foreign Nationals who are already in Canada participating in or facilitating a prohibited public assembly.

Q3: Does it matter what country the Foreign Nationals are coming from?

EA regs apply either way, but the process is different if coming from the US or coming from any other country.

From US

Foreign Nationals seeking to enter Canada from the US, who seek to enter with the intent to participate in or facilitate a prohibited assembly, are prohibited under the EA regs. Based on this new EA regs prohibition, they will be directed back to the US under the existing immigration scheme. This is not an inadmissibility.

From any country other than US

Foreign Nationals seeking to enter Canada from any country other than the US, who seek to enter with the intent to participate in or facilitate a prohibited assembly, are prohibited under the new EA regs. If they make their way to Canada they become temporary residents which triggers the existing immigration scheme and renders them inadmissible for non-compliance with the EA regs. They are issued a removal order and then removed from Canada.

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What about foreign nationals who are already in Canada participating in a prohibited assembly or for whom CBSA Officers at the border are not aware of the Foreign National's intent when entering?

If CBSA becomes aware that a Foreign National who is already in Canada is participating in or facilitating a prohibited assembly, the existing immigration scheme is triggered based on non-compliance with the EA regs. The Foreign National is inadmissible, a removal order is issued and they are removed.

Do transportation companies have a role?

Yes, the EA regs prohibition on entry triggers existing immigration authorities which require transportation companies not to carry the Foreign National to Canada. [LET CBSA SAY THIS, but CBSA has no plans to penalize transportation companies who do not comply.]

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